

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 503 OF 2005

1. M/s.Surana Bangles]
a partnership firm,]
carrying on their]
business at 63/71, 3rd]
Bhoiwada Shroff Mansion]
2nd floor, Kalbadevi]
Mumbai-400002]
2. Shri.Sukanraj Devichand]
Surana of Mumbai,]
Indian Inhabitants,]
having their address]
and carrying on]
business At 65/71,]
3rd Bhoiwada, Shroff]
Mansion, 2nd floor,]
Kalbadevi, Mumbai]
400 002]..Petitioners

Vs.

1. Union Bank of India]
a body Corporate]
constituted under the]
Banking Companies]
(Acquisition and]
Transfer of]
Undertakings) Act V of]
1970 having their]
Head Office at Union]
Bank Bhavan, 239,]
Vidhan Bhavan Marg,]
Nariman Point, Mumbai]
400021 and one of]
their Branch Office]
amongst offices at]
66/80, Mumbai Samachar]
Marg, Fort, Mumbai]
400023 known as]
Mumbai Samachar Marg]

- Branch.]
2. Debt Recovery Tribunal]
Bombay]
3. Debt Recovery Appellate]
Tribunal Bombay.] ..Respondents

.....
Mr.J.P.Sen with Mr.N.Engineer and Mr.Chirag
Mody i/b RMG Law Associates for Petitioners
Mr.N.S.Fadia for Respondent No.1
.....

CORAM: F.I.REBELLO AND
SMT.V.K.TAHILRAMANI, JJ.
DATE : JUNE 12, 2006

ORAL JUDGMENT (PER SMT.V.K.TAHILRAMANI, J.):

1. This petition filed under Article 226 of the Constitution of India assails the order dated 1.7.2002 passed by the learned Presiding Officer Debt Recovery Tribunal Mumbai in O.A.No. 1469 of 2000 and which is confirmed by the learned Chair Person, Debt Recovery Appellate Tribunal on 22.12.2004 in Appeal No.93 of 2004.

2. Brief facts leading to the impugned order are that the petitioner is a partnership firm and engaged in the business of manufacturing export and import in plastic, aluminium and brass bangles, imitation jewellery and handicrafts articles at Mumbai. It has a current account with the

Respondent-Union Bank of India, Branch at Cotton Exchange, Kalbadevi, Mumbai for last about 35 years. The petitioner's account came to be credited by the Respondent Bank with US\$ 100000 (equivalent to Rs.31,33,000/-) allegedly from a foreign buyer by name M.K.B. of Singapore. The amount came to be credited to the current account of the petitioner under the Certificate of Foreign Inward Remittance on 7.10.1993. The petitioner had on going business dealings with M.K.B. of Singapore, hence, treating this as an advance, the petitioner dispatched the goods i.e. exported goods to M.K.B. from time to time against the payment of US\$ 100000. This was also confirmed by the Bank on 26.10.1993, 17.11.1993, 10.12.1993, 22.12.1993, 10.1.1994 and 18.1.1994. On every one of these remittances, the Bank had put its seal. Thus the petitioner utilised alleged advance from the foreign buyer and satisfied the same by dispatching goods.

3. By letter dated 6.6.1992 the Bank informed the petitioner that Foreign Inward Remittance of US\$ 100000 was meant to be in favour of another company by name M/s. D.L.Tanumal Pvt.Ltd. and by mistake

it was credited to the current account of the petitioner. The bank claimed recovery of the amount of US\$ 100000 vide its letters dated 1.12.1995 and 28.12.1995. The petitioner repaid the said amount in monthly instalment of US\$ 10000 and the total recovery of the bank was satisfied by November, 1996.

4. For the first time by its letter dated 3.6.1997, the Bank claimed the recovery of interest on the claim already satisfied by the petitioner. Not only this, the Bank went a step further and it refused to encash FDR of the petitioner on its maturity which amount approximately came to Rs.6,03,940/-. It appears from the record that the petitioner approached the Consumers Dispute Redressal Commission, Maharashtra State, Mumbai in complaint Nos. 21 and 22 of 1998 and Commission by order dated 15.10.1999 directed the Bank to pay the petitioner an amount of Rs.9,86,000/-. This order of the Commission was challenged by the Bank before the National Consumer Dispute Redressal Commission, New Delhi in First Appeal No. 419-420 of 1999. The said appeals came to be dismissed for default on 10.1.2006.

5. The Bank by Original Application No.1469 of 2000 filed claim before the Debt Recovery Tribunal for recovery of Rs.12,05,397/- by way of interest payable by the petitioner on the amount of US\$ 100000/- which was wrongly credited to the account of the petitioner. The said Original Application was allowed *exparte* and *exparte* recovery certificate was passed on 1.7.2002. The petitioner therefore, filed Misc. Application No.68 of 2003 before the Debt Recovery Tribunal and prayed for setting aside the *exparte* award of the Debt Recovery Tribunal and to restore the Original Application No.1469 of 2000. The said application came to be dismissed on the ground that the petitioner was negligent in defending the claim of the bank and there was no document to support the petitioner's claim of hospitalisation subsequent to 23.10.2001. Thus dismissal order dated 5.9.2003 came to be passed. Against the said order, the petitioner preferred Appeal No.93 of 2004 before Debt Recovery Appellate Tribunal. The said Appeal came to be dismissed on 23.11.2004.

6. A perusal of the judgment of the Appellate

Tribunal shows that it mainly dealt with the justification of the Debt Recovery Tribunal in dismissing the restoration application and it did not speak about the merits of the bank's claim for recovery of interest from the petitioner. Having regard to the peculiar facts of this case and the cryptic order passed by the Appellate Tribunal which is also a forum for fact finding, we have no hesitation to hold that the petitioner's application for restoration, deserves to be allowed so as to adjudicate afresh Original Application No.1469 of 2000 filed by the bank on its own merits after allowing the petitioner to file its reply and defend the claim.

7. The record does show that the petitioner firm had engaged an advocate before Debt Recovery Tribunal. However, the said advocate did not take steps to file reply after causing his appearance. It is pertinent to note that the respondent bank itself had acknowledged that the subject remittance was found to have been credited by mistake for the first time on 6.6.1994. However, much prior to that i.e. 26.10.1993 to 18.1.1994, the petitioner had dispatched the goods to the foreign buyer in 12

lots and thus the remittance of US\$ 100000 was duly satisfied. These dispatches have been confirmed and adjusted by the foreign exchange branch of the bank between 26.10.1993 to 18.1.1994. Foreign Inward Remittance Certificate has certified these transactions. Thus, the petitioner has not concealed anything nor did he engage in any misappropriation of these remittances. As soon as the Bank informed him that remittances were wrongly made to his account, the petitioner offered to return the amount in instalments of US\$ 10000 and the full amount was returned to the bank by November, 1996.

8. The Bank did not raise any claim of any interest till the entire amount was repaid by the petitioner. For the first time, by its letter dated 3.6.1997 which was addressed to the petitioner, the bank raised the claim of interest. The fact that petitioner succeeded in claiming an amount of Rs.9,86,000/- from the bank pursuant to the order passed by the Consumers Dispute Redressal Commission, Maharashtra State is relevant for deciding the bank's claim for recovery of interest against the petitioner. All these circumstances

are required to be placed before the Debt Recovery Tribunal to defend the claim made by the bank for recovery of interest against the petitioner and these circumstances could not be placed before the lower forums for some reason or the other. In this view of the matter, the impugned orders are unsustainable and the petitioner's application for restoration deserves to be allowed by setting aside the impugned order of the Debt Recovery Appellate Tribunal as well as the order dated 9.9.2003 passed by the Debt Recovery Tribunal.

9. In the result, the petition is allowed and the order passed by the Debt Recovery Appellate Tribunal on 22.12.2004 and the order passed by the Debt Recovery Tribunal on 5.9.2003 and 1.7.2002 are hereby quashed and set aside. Consequently, Misc. Application No.68 of 2003 is hereby allowed and Original Application No.1469 of 2000 is restored to file of Debt Recovery Tribunal by setting aside its exparte award dated 1.7.2002. Rule made absolute accordingly but by imposing costs of Rs.10,000/- to be paid by the petitioner to the bank.

10. The Debt Recovery Tribunal is directed to hear and decide the Original Application No.1469 of 2000

as per law as expeditiously as possible after the petitioner files his written statement. The petitioner shall file his written statement within five weeks from today.

[F.I.REBELLO, J.]

[SMT.V.K.TAHILRAMANI, J.]